

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

June 6, 2005

Jeffrey L. Timmons
Jeffrey L. Timmons, P.C.
Counsel for KM Television
of Flagstaff, L.L.C.
3235 Satellite Boulevard
Building 400, Ste. 300
Duluth, Georgia 30096-8688

Re: KM Television of Flagstaff, L.L.C.
Request for Waiver of FY 2004
Regulatory Fees
Fee Control No. 0408198835326016

Dear Mr. Timmons:

This responds to your August 17, 2004 letter requesting waiver or reduction of the regulatory fee for fiscal year (FY) 2004 for KM Television of Flagstaff, L.L.C. (KM Television), licensee of television station KCFG(TV), Flagstaff, Arizona. In support of fee reduction, you assert that KCFG was assessed a fee of \$41,475, due for stations in DMA markets 11-25, but should be assessed a fee of \$4,050, due for stations in "Remaining Markets." Alternatively, you request a full waiver on grounds of financial hardship. Our records show that KM Television has paid \$4,050 in FY 2004 regulatory fees for KCFG.

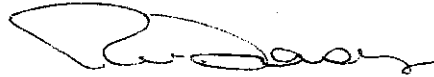
In support of your request for a full waiver based on financial hardship, you attach a summary of revenues and expenses, and a summary of assets and liabilities, for KM Television for calendar year 2003. You state that KCFG is a new station that began broadcasting only in December 2000, has not been able to realistically market or promote the station or sell advertising, and has generated virtually no revenue. You cite a number of expenses that KM Television has incurred to improve its analog and DTV facilities. Finally, you state that KM Television required a loan of \$113,350 from its owner to cover its 2003 operating expenses, and has made no payments to the owner or to any other principal since the station was constructed and began operating.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5346 (1994), recon. granted, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

Our review of the financial documentation you submitted indicates that KCFG had expenses of over \$135,000 in 2003 without corresponding income from revenues. Thus, the licensee experienced a financial deficit in 2003 without regard to any deduction for depreciation or payments to any principal or officer of the station. Therefore, your request for a waiver of the regulatory fee for FY 2004 is granted in full.¹ Accordingly, we also grant KM Television a refund of the \$4,050 that KM Television paid in connection with the FY 2004 regulatory fee. This waiver, however, is limited to the FY 2004 regulatory fee. If KM Television continues to experience financial hardship, you may request waiver of the fees for succeeding years only if supported by appropriate documentation.

A check made payable to the maker of the original check and drawn in the amount of \$4,050, will be sent to you at the earliest practicable time. If you have any questions concerning this letter, please contact the Revenue and Receivable Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

¹ In light of this result, it is unnecessary to address your "Remaining Markets" argument for fee reduction.

ORIGINAL

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August 17, 2004

VIA FEDERAL EXPRESS

Office of the Managing Director

Federal Communications Commission

445 12th Street, S.W., Room 1-A625

Washington, D.C. 20554

Attn: Regulatory Fee Waiver/Reduction Request

0408198835326016

RE: KM Television of Flagstaff, L.L.C.
Television Station KCFG(TV), Flagstaff, Arizona

Dear FCC:

KM Television of Flagstaff, L.L.C. ("KM"), licensee of full power commercial television station KCFG(TV), Flagstaff, Arizona (Facility ID No. 35104, "KCFG"), by its counsel, and pursuant to the Commission's Regulatory Fees Fact Sheet, Waivers, Reductions and Deferments of Regulatory Fees (dated July 2004, the "Waiver Fact Sheet"), respectfully requests the waiver of, or in the alternative, a reduction in, the annual regulatory fee to be paid by KM for KCFG for fiscal year 2004. The Waiver Fact Sheet states that the Commission will consider the waiver or reduction of annual regulatory fees in extraordinary and compelling circumstances, upon a showing that such a waiver or reduction would serve the public interest. For the reasons stated herein, KM also respectfully requests that the Commission defer payment of the regulatory fee until the Commission acts upon this request for waiver; however, KM is timely paying (i.e., by August 19, 2004) the reduced regulatory fee of \$4,050 proposed herein.¹

KM completed construction and first put KCFG on the air as a new full power commercial television station in December 2000. Since KCFG and Flagstaff are assigned to the Phoenix, Arizona Designated Market Area ("DMA"), which ranked as DMA No. 17, see 2001 Television & Cable Factbook at A-62 ("2001 Factbook"), the regulatory fee for KCFG normally would be \$41,475. See Regulatory Fees Fact Sheet, What You Owe - Media Services Licensees for FY 2004 at 3 (\$41,475 regulatory fee for commercial VHF stations in DMA markets 11-25) (the "Media Services Fact Sheet").

¹ KM filed similar requests for waiver or reduction of the annual regulatory fees due for KCFG for Fiscal Years 2002 and 2003, both of which have been granted.

Assessing KCFG with the \$41,475 annual regulatory fee due for a DMA 11-25 station does not reflect the realities of KCFG's service area, market and economic situation, and therefore the regulatory fees should be reduced for fiscal year 2004, if not waived completely. KCFG currently is licensed and operates with only 1 kilowatt effective radiated power ("ERP") due to a power restriction at its antenna site, and as a result KCFG is predicted to serve a population of only 74,677 persons (1990 U.S. Census) within its predicted Grade B contour,² which is only a small fraction (about 2%) as compared to the 1,441,660 households in the Phoenix DMA. See 2001 Factbook at A-62. Flagstaff itself has a current (2000 U.S. Census) population of only 52,894 persons, as compared to the 1,321,045 person population of Phoenix (the principal community in the Phoenix DMA, and where the vast majority of the population in the DMA resides).

Since Flagstaff is more than 130 miles from Phoenix, with mountain terrain between the two communities, KCFG can not expect to serve Phoenix with an off-the-air signal. Nor would KM likely be successful in reaching Phoenix-area viewers by gaining mandatory carriage (or "must carry") of KCFG on Phoenix-area cable television systems; the Commission has typically found in favor of Phoenix cable television systems seeking to delete Flagstaff stations from their mandatory carriage obligations under market modification requests.³ Accordingly, since KCFG does not serve, and indeed is unable to serve or expect to serve, Phoenix or much of the Phoenix DMA, the annual regulatory fee for KCFG should be reduced, if not waived. Specifically, KM proposes that the annual regulatory fee be reduced to the \$4,050 due from commercial VHF stations in "Remaining Markets" (i.e., DMA markets ranked below the top 100 DMAs), see Media Services Fact Sheet at 3, which more accurately reflects the current and potential service area, or "market", of KCFG.

Assessing KCFG the \$41,475 fee due from Phoenix DMA No. 17 stations would ignore the facts and market realities faced by KM and KCFG, and would harm the service that may be offered by KCFG, and would also impose a financial hardship on KM; therefore, not only should the regulatory fee for KCFG be reduced to \$4,050 (or waived entirely), KM should also be granted a deferment from paying the full \$41,475 that otherwise would be due from a commercial VHF station in DMA 11-25 pending the outcome of this reduction or waiver request.

² See File No. BPCT-19950317KN at Section V-C - TV Broadcast Engineering Data, Question 17 (as amended February 2, 1996, the current Form 310 engineering for the station's licensed parameters).

³ See, e.g., CoxCom, Inc., File No. CSR-5887-A, Memorandum Opinion and Order, DA 02-2295 (released September 18, 2002). In CoxCom, the Commission granted a cable television operator's request to delete Phoenix and 28 other Phoenix-area communities from the definition of the "market" within which full power television station KFPH(TV), Flagstaff, Arizona is entitled to must carry rights. Id. The Commission relied primarily on the distance between Flagstaff and Phoenix, as well as KFPH(TV)'s lack of Grade B or better signal coverage over Phoenix and the other communities, as the basis for finding that KFPH(TV) did not serve Phoenix for purposes of the definition of its local market for must carry purposes. Id. KM notes that KFPH(TV) is licensed to operate on Channel 13 with the maximum 316 kilowatts ERP, see 2001 Factbook at A-63, and therefore would have a much greater service area even than KCFG(TV).

Attached hereto as Exhibit A are an unaudited Statement of Revenues & Expenses (or "profit and loss" statement, the "P&L") for KM for calendar year 2003 (which is also KM's fiscal year, and is the most recent full year for which financial statements are available for KM) and a Statement of Assets, Liabilities & Equity (or "Balance Sheet") as of December 31, 2003 for KM, certified as accurate by an officer of KM. The P&L reflects that KM suffered a loss of over \$135,000 on KCFG in 2003, with almost no revenues generated by the station. The poor financial condition of KM and KCFG reflects that the station is a new station that just commenced broadcasting in December 2000; was able to secure and commence broadcasting the America One Network programming (which as a fringe network has yet to generate any advertising revenue for the station) in January 2002; and due to the currently weak signal of KCFG (1 kilowatt ERP, due to the transmitter site limitation) and relatively weak programming, the station has not been able to realistically market or promote the station or sell advertising. KM was able to continue to operate KCFG in 2003 only by KM's principal and 100% owner, Mrs. Myoung Hwa Bae, loaning \$113,350 to KM during 2003 to cover its operating expenses. No payments have been made by KM or KCFG to Mrs. Bae or to any other principal or owner of KM or KCFG, since the station was constructed and has been operating.

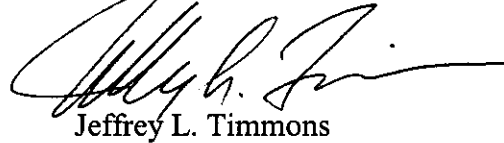
KM's financial hardship with KCFG has been further exacerbated by KM's expenditure of over \$100,000 (see File No. BEPCDT-20020430ABI) in the spring of 2002 to construct and implement digital television ("DTV") facilities for KCFG (under special temporary authority, see File Nos. BDSTA-20020422ABC, as extended by BEPCDT-20020430ABI) to meet the May 1, 2002 deadline for commercial stations to have their DTV signals on the air. KM also had an application pending for close to two years to greatly improve the signal of KCFG, by changing to a better antenna site and increasing the ERP of the station to the maximum 316 kilowatts ERP permitted (see File No. BPCT-20010706AAQ), which was granted in April 2003. KM expects to expend considerable funds implementing this facilities and service improvement, and indeed KM has been paying \$2,000 per month rent for over 4 years now (since September 1, 2000) to secure the use of its modification site, in anticipation of action by the Commission on the modification application. In the interim, KM is also pursuing its must carry rights with area cable television systems, which with the current KCFG facilities will require KM to deliver the KCFG signal to the cable television system headends by alternate means (such as microwave), another added expense.

In short, KM's current financial hardship in operating KCFG, as well as the implementation of its planned service improvements for both its analog and DTV facilities, would make it unduly burdensome for KM to pay the \$41,475 regulatory fee that would be due from a Phoenix DMA station, in addition to the inequities that arise from KCFG and Flagstaff -- which essentially are a small market station in a small market -- happening to fall in the Phoenix DMA, DMA No. 17. Even payment of the \$41,475 and awaiting a refund later would impose a severe financial hardship on KCFG, plus would reduce service to the community by severely hampering KM's ability to implement the planned analog television station and cable carriage improvements.

Accordingly, for the reasons stated herein, KM respectfully requests that the Commission reduce the annual regulatory fee due from KM for KCFG for fiscal year 2004 from \$41,475 to \$4,050 (or waive the fee entirely). KM also requests that the Commission defer the deadline by which KM must pay such annual regulatory fee, based on the financial hardship and reduction of service factors demonstrated herein; however, KM is timely paying its proposed reduced fee of \$4,050 by the August 19, 2004 payment deadline.

Please date-stamp the enclosed additional "FILE" copy of this filing and return it the undersigned in the enclosed self-addressed stamped envelope. Any questions regarding this filing and the requests made herein may be directed to the undersigned counsel for KM.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Jeffrey L. Timmons", written in a cursive style.

Jeffrey L. Timmons

Attachment

cc: Mrs. Myoung Hwa Bae